

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TAMARA MCWILLIAMS; HENRY,
SHAMBRY, JR.; D. GRANT WALTER
and STEVEN ARMONY; individually
and on behalf of other persons
similarly situated,

02-CV-1426-JE

ORDER

Plaintiffs,

v.

PORTLAND PUBLIC SCHOOL DISTRICT
NO. 1J; MULTNOMAH COUNTY, OREGON;
PORTLAND BOARD OF EDUCATION;
MARC ABRAMS; LOLENZO POE; SUE
HAGMEIER; DERRY A. JACKSON, SR.;
DEBBIE GOLDBERG MENASHE; JULIA
BRIM-EDWARDS; KARLA WENZEL; and
JAMES SCHERZINGER,

Defendants.

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BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#62) on October 31, 2006, in which he recommended the Court deny Defendants' Motion to Strike (#44). Defendants filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

On *de novo* review, the Court notes the Tolling Agreement

between the parties is ambiguous as to whether, after the case was reversed on appeal and remanded by the Ninth Circuit, Plaintiffs were required to comply with Federal Rule of Civil Procedure 15(a) before filing an Amended Complaint in the district court. It is clear from the record that the parties intended to agree to Plaintiffs' amendment of their Complaint if the Judgment of the district court was reversed. If Plaintiffs had requested leave from the Court to file an Amended Complaint after the Ninth Circuit reversed and remanded this matter to the district court, the Court would have granted their request.

Accordingly, the Court adopts the Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#62) and, accordingly, **DENIES** Defendants' Motion to Strike (#44).

IT IS SO ORDERED.

DATED this 25th day of January, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge